



**Australian Government**  
**Anti-Dumping Commission**

**PUBLIC RECORD**

**CUSTOMS ACT 1901 - PART XVB**

# **CONSIDERATION REPORT NO. 335**

**APPLICATION FOR CONTINUATION OF  
ANTI-DUMPING MEASURES**

**CLEAR FLOAT GLASS EXPORTED FROM THE PEOPLE'S  
REPUBLIC OF CHINA, REPUBLIC OF INDONESIA AND  
KINGDOM OF THAILAND**

22 February 2016

**CONTENTS**

**CONTENTS..... 2**

**ABBREVIATIONS..... 3**

**1 SUMMARY AND RECOMMENDATIONS ..... 4**

1.1 LEGISLATIVE FRAMEWORK ..... 4

1.2 FINDINGS AND CONCLUSIONS ..... 4

1.3 RECOMMENDATION ..... 4

**2 BACKGROUND..... 5**

2.1 HISTORY OF THE ANTI-DUMPING MEASURES..... 5

2.2 THE GOODS ..... 6

2.3 TARIFF CLASSIFICATION OF THE GOODS ..... 7

2.3.1 TARIFF CONCESSION ORDERS..... 7

2.4 AUSTRALIAN INDUSTRY PRODUCING LIKE GOODS ..... 7

**3 COMPLIANCE WITH SECTION 269ZHC..... 8**

3.1 LEGISLATIVE FRAMEWORK ..... 8

3.2 THE COMMISSION’S ASSESSMENT ..... 8

**4 CONSIDERATION OF REASONABLE GROUNDS..... 9**

4.1 LEGISLATIVE FRAMEWORK ..... 9

4.2 CONTINUATION OF DUMPING..... 9

4.2.1 APPLICANT’S CLAIMS..... 9

4.3 CONTINUATION OF EXPORTS ..... 10

4.3.1 APPLICANT’S CLAIMS..... 10

4.4 CONTINUATION OR RECURRENCE OF MATERIAL INJURY CAUSED BY DUMPING..... 10

4.4.1 APPLICANT’S CLAIMS..... 10

4.4.2 THE COMMISSION’S ASSESSMENT..... 11

4.5 THE COMMISSION’S CONCLUSION ..... 11

**5 LIST OF APPENDICES AND ATTACHMENTS..... 13**

## PUBLIC RECORD

### ABBREVIATIONS

ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	CSR Viridian Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CEO	Chief Executive Officer
CFG	clear float glass
China	the People's Republic of China
EBIT	earnings before interest and tax
the goods	clear float glass (CFG) as per section 2.2 - the goods the subject of the application
Indonesia	the Republic of Indonesia
REP 159C	Trade Remedies Branch Report 159C
TCO	Tariff Concession Orders
TER159B	Termination Report 159B
Thailand	the Kingdom of Thailand
TMRO	Trade Measures Review Officer
USD	United States Dollar
Viridian	CSR Viridian Limited
Xinyi	Xinyi (Donguan) Co. Ltd

## 1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the consideration of an application lodged by CSR Viridian Limited (Viridian) for the continuation of the anti-dumping measures applying to clear float glass (CFG) exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand).

### 1.1 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (Commissioner) in dealing with an application for the continuation of anti-dumping measures.<sup>1</sup>

Pursuant to subsections 269ZHD(1) and 269ZHD(2), the Commissioner must reject an application for the continuation of anti-dumping measures if he is not satisfied that:

- the application complies with subsection 269ZHC; and/or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

### 1.2 Findings and conclusions

The Anti-Dumping Commission (Commission) considers that the application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by the Commissioner for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged with the Commissioner as prescribed in subsection 269ZHC(2).

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

### 1.3 Recommendation

The Commission recommends that the Commissioner not reject the application for the continuation of anti-dumping measures applicable to CFG exported to Australia from China, Indonesia and Thailand.

If the Commissioner accepts this recommendation, to give effect to that decision, he must sign the instrument at **Attachment 1** and publish a notice of his decision to initiate an inquiry into whether the continuation of the anti-dumping measures is justified.

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

## 2 BACKGROUND

On 2 December 2015, in accordance with subsection 269ZHB(1) of the Act, a notice was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on CFG exported to Australia from China, Indonesia and Thailand.

On 1 February 2016, Viridian, a member of the Australian industry producing CFG, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.<sup>2</sup>

### 2.1 History of the anti-dumping measures

On 19 April 2010, the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service, the then decision maker for anti-dumping matters, initiated an investigation following an application lodged by Viridian, the sole manufacturer of certain CFG in Australia. The application requested the publication of a dumping duty notice in respect of the CFG exported to Australia from China, Indonesia and Thailand.

The delegate of the CEO terminated the investigation after finding that the injury to the Australian industry attributable to dumping was negligible. A notice of the decision to terminate was published in *The Australian* newspaper on 22 December 2010, and the reasons for doing so published in Termination Report 159B (TER 159B).

On 20 January 2011, Viridian lodged an application with the Trade Measures Review Officer (TMRO), the then review body, requesting a review of the termination decision made in TER 159B. The TMRO subsequently accepted the application. Following consideration of Viridian's application, the TMRO revoked the decision to terminate the investigation in relation to exports from China, except for Xinyi (Donguan) Co. Ltd (Xinyi), Indonesia and Thailand.

The investigation resumed and, as described in Trade Remedies Branch Report 159C (REP 159C), it was found that:

- clear float glass exported from China (other than by Xinyi) to Australia was dumped at margins between 11.4% and 26.4%;
- clear float glass exported from Indonesia to Australia was dumped at margins between 3.3% and 22.4%;
- clear float glass exported from Thailand to Australia was dumped at margins between 3.5% and 11.8%;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

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<sup>2</sup> In accordance with subsection 269ZHB(1)(b).

## PUBLIC RECORD

Accordingly, it was recommended that the Attorney General<sup>3</sup> impose dumping duties on the goods exported from China, Indonesia and Thailand. On 17 October 2011, the Attorney General published a dumping duty notice for CFG exported to Australia from China, Indonesia and Thailand. Notification of the Attorney General's decision was given in Australian Customs Dumping Notice No. 2011/50. On 16 November 2011, Australian Customs Dumping Notice No. 2011/56 was published that provided additional clarity in relation to the effective rates of duties for measures imposed on CFG by thickness.

The anti-dumping measures applicable to exporters of CFG to Australia from China, Indonesia and Thailand are due to expire on 17 October 2016.

### 2.2 The goods

The goods, the subject of the current anti-dumping measures, have nominal thicknesses of 3 to 12 millimetres (mm).

The acceptable tolerances to these thicknesses are:

Nominal thicknesses (mm)	Acceptable tolerances (mm)	
	Minimum	Maximum
3	2.80	3.50
4	3.51	4.50
5	4.51	5.50
6	5.51	7.00
8	7.01	9.00
10	9.01	11.00
12	11.01	12.30

The goods have the following characteristics:

- transparent;
- flat; and
- rectangle or square in shape.

Glass with the following characteristics is not the goods the subject of the application:

- coated, coloured, tinted or opaque;
- absorbent, reflective or non-reflective layer;
- wired;
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked;
- framed or fitted with other materials;
- toughened (tempered) or laminated;
- acid etched; or
- low iron.

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<sup>3</sup> The Attorney General was the decision maker at this point in time for anti-dumping matters.

### **2.3 Tariff classification of the goods**

The tariff classification of the goods is 7005.29.00, statistical codes 3, 4, 5, 6 and 9 in Schedule 3 of the *Customs Tariff Act 1995*. The general rate of duty is 5 per cent; the rate applicable to countries with Developing Country Status (DCS) is 4 per cent. China and Indonesia are subject to the DCS rate, and imports from Thailand are free of duty.

#### **2.3.1 Tariff Concession Orders**

There are two Tariff Concession Orders (TCOs) linked to tariff classification 7005.29.00, detailed below:

<b>TCO</b>	<b>Description</b>
TC 9209312	Float Glass, clear, iron content equal to or less than 0.02 per cent in sheets, non-wired, without an absorbent or reflecting layer, not being cast, rolled, drawn or blown glass.
TC 8533852	Glass, having a thickness of not less than 13.5mm

Glass subject to the TCOs above are not the goods; glass applicable to TC 9209312 is a low iron glass, and TC 8533852 has a nominal thickness exceeding the accepted maximum specified tolerance of glass with a thickness of 12 mm (as noted in section 2.2 above).

### **2.4 Australian industry producing like goods**

The applicant is the sole manufacturer of CFG in Australia. This satisfies the requirements of subsection 269ZHB(1)(b)(ii) that the applicant represents the whole or a portion of the Australian industry producing like goods to the goods covered by the measures.

The applicant has provided production and sales data for CFG. The Commission remains satisfied that there is an Australian industry producing like goods.

### **3 COMPLIANCE WITH SECTION 269ZHC**

#### **3.1 Legislative framework**

Subsection 269ZHC(1) specifies that an application under section 269ZHB must:

- (a) be in writing;
- (b) be in a form approved by the Commissioner for the purposes of this section;
- (c) contain such information as the form requires;
- (d) be signed in the manner indicated in the form; and
- (e) be lodged in the manner approved under section 269SMS.

Subsections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

#### **3.2 The Commission's assessment**

The application received was in writing, in the form approved by the Commissioner for the purposes of section 269ZHC, contained such information as the form requires, was signed in the manner indicated in the form and was lodged in the manner approved under section 269SMS.

The applicant also provided a non-confidential version of the application. The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures.

The non-confidential version of the application is available on the Commission's public record (which can be accessed electronically at [www.adcommission.gov.au](http://www.adcommission.gov.au)).



## 4 CONSIDERATION OF REASONABLE GROUNDS

### 4.1 Legislative framework

Under subsection 269ZHD(2)(b), the Commissioner must consider whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

### 4.2 Continuation of dumping

#### 4.2.1 Applicant's claims

The applicant considers that it is likely that exporters from China, Indonesia and Thailand will resume exporting to Australia at dumped prices should the anti-dumping measures be allowed to expire.

The applicant claims that the CFG industries to which the measures apply are characterised by overcapacity, and that this excess capacity might find its way to Australia and be sold at dumped prices.

In support of the applicant's claim of excess capacity in China, the applicant refers to an Economic Policy Institute Briefing Paper<sup>4</sup> that demonstrates that China had significant overcapacity between the periods from 2004 to 2008. More recently, the applicant advised that anti-dumping measures were imposed by Brazil on 19 December 2014 on six countries, including China, for CFG exports with a 2mm to 19mm thickness. The applicant argues that this is evidence that the goods exported to Australia might be at dumped prices if the measures are allowed to expire.

With regard to Indonesia and Thailand, the applicant was not able to demonstrate that there is excess capacity. However, the applicant notes that exports from China, Indonesia and Thailand have increased over a 3 year period from 2013 to 2015 and this increase indicates that the countries subject to this notice can accelerate exports to Australia should the measures expire.

The applicant claims that domestic prices for CFG in China are artificially low. The Economic Policy Institute Briefing Paper referenced above reveals that China's glass and glass products industry received at least USD \$30.3 billion in subsidies from 2004 to 2008 with the flat glass sector receiving USD \$4.8 billion. The subsidies spanned key inputs in the manufacture of glass - heavy oil, coal, electricity and soda ash.

At the time of the original dumping investigation, the applicant was not aware that subsidies were in place and advises that there is no evidence to suggest that these subsidies have ceased.

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<sup>4</sup> Economic Policy Institute Briefing Paper: Through China's Looking Glass, Subsidies to the Chinese Glass Industry from 2004-08, October 2009: <http://www.epi.org/publication/bp242/>

### **4.3 Continuation of exports**

#### **4.3.1 Applicant's claims**

In the application, the applicant states that exports from China, Indonesia and Thailand represented █% of total Australian CFG and other glass imports over a three year period from 2013 to 2015. In terms of Australian market share, these exports represent █%.

The applicant used Australian Bureau of Statistics (ABS) import data to demonstrate that there are existing distribution channels into Australia and that China, Indonesia and Thailand have the capacity to increase exports of CFG to Australia should the current measures be allowed to expire.

### **4.4 Continuation or recurrence of material injury caused by dumping**

#### **4.4.1 Applicant's claims**

The applicant has demonstrated that there is an established industry in Australia producing the goods. There has been a major restructure of the applicant's operations since 2008. This includes a significant upgrade to the Dandenong plant, the decommissioning of the Ingleburn plant and the consolidation of the manufacturing facility at Wetherill Park into the Erskine Park glass manufacturing facility.

The applicant prepared, in support of the application, financial data representing the period from April 2013 to March 2015. The data details the average selling price, cost to make and sell, gross margin and earnings before interest and tax (EBIT) relevant to its manufacture of CFG. The applicant submits that greater price competition from dumped goods would have a negative impact on both its gross margin and EBIT. This data is contained at **Confidential Attachment 1**.

The applicant contends that the removal of the existing anti-dumping measures will result in price undercutting causing price depression, price suppression and reduced profit and profitability.

#### **4.4.2 The Commission's assessment**

The applicant alleges that Government of China influence in the raw materials market has caused artificially low pricing for CFG in China. However, the Commission considers that the supporting evidence provided by the applicant is not current and does not reflect prices currently paid for CFG, nor what impact the alleged government subsidies may have on those prices. Accordingly, the Commission considers that the applicant has not provided sufficient evidence to support its claim that there is a particular market situation in China which would make prices for CFG in the Chinese domestic market unreliable for the purpose of calculating a normal value; in the absence of further information, the Commission will not examine the market situation allegation during the inquiry. However, the Commission notes that it is still required to consider whether the raw material costs recorded by exporters in their accounts are competitive market costs for the purposes of subsection 269TAAD(4) and section 43 of the *Customs (International Obligations) Regulation 2015*.

In addition, the Commission considers that the applicant has not adequately supported its claim that the countries subject to the notice currently have excess CFG manufacturing capacity. However, the applicant has demonstrated that glass related exports from China, Indonesia and Thailand to Australia have increased over a three year period. This data is consistent with United Nations International Merchandise Trade Statistics<sup>5</sup> which shows that worldwide exports of glass related products from China have increased by 13.6% and 'Other Asia' (which includes Indonesia and Thailand amongst others), by 10% from 2010 to 2014. This is also consistent with the Commission's analysis of the Australian Border Force (ABF) import database, which shows that imports of CFG from China, Indonesia and Thailand have continued since the anti-dumping measures were imposed, demonstrating that exporters have maintained distribution links in Australia.

The Commission considers it likely that the expiration of the anti-dumping measures would lead to lower export prices and an increased volume of exports of the goods. As a consequence, there appears to be reasonable grounds for asserting that the Australian industry will experience pricing pressure which may lead to reduced profits and profitability. The applicant was able to demonstrate the impact adverse price effects would likely have on both its gross margin and EBIT.

#### **4.5 The Commission's conclusion**

The Commission considers that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Accordingly, it is recommended that the Commissioner not reject the application. If the Commissioner accepts this recommendation, in accordance with subsection 269ZHD(4), a notice will be published, indicating that the Commission will inquire into whether the continuation of the anti-dumping measures is justified. The inquiry will also examine

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<sup>5</sup> Glass 664 <http://comtrade.un.org/pb/CommodityPagesNew.aspx?y=2014>

## **PUBLIC RECORD**

whether the variable factors relevant to the taking of the anti-dumping measures have changed.

For the purposes of this inquiry, the Commission recommends that the Commissioner use the period 1 January 2015 to 31 December 2015 to assess the variable factors relevant to the taking of the anti-dumping measures to determine whether the dumping duty notice relating to CFG:

- remain unaltered; or
- cease to apply to a particular exporter or to a particular kind of goods; or
- have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
- expire on the specified expiry date.

To provide clarity to interested parties, the Commission will not use the continuation inquiry to examine whether the alleged subsidies for raw material inputs or any subsidies paid to CFG exporters may be countervailable subsidies.

**5 LIST OF APPENDICES AND ATTACHMENTS**

<b>Attachment 1</b>	Delegate's instrument
<b>Confidential Attachment 1</b>	Applicant's financial data